

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2000-005211

FILED: \_\_\_\_\_

PAUL THOMAS DEMOS II

PAUL THOMAS DEMOS II  
333 E VIRGINIA AVE #112  
PHOENIX AZ 85004-0000

v.

EDWARD NEARY, et al.

WILLIAM F BENNETT

PHX JUSTICE CT-E2  
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

This matter commenced in July 1999 when Appellee(the Nearys) filed a complaint for forcible detainer against Appellant (Paul Thomas Demos II) in Phoenix Justice Court, seeking to have Appellant evicted from a property owned by Appellee. On September 3, 1999, Appellant filed a civil complaint against Appellee, seeking damages in the amount of \$4,998.00 for acts allegedly committed by Appellee during the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2000-005211

lease period. Appellee counterclaimed for \$2,829.66 for unpaid rent, late fees and for attorney's fees from the forcible detainer action. The East Phoenix Justice Court set a pre-trial hearing with the admonition that a failure to appear "may" result in a judgment against the non-appearing party: Appellant failed to appear.

On November 24, 1999, the East Phoenix Justice Court entered an Entry of Default and gave Appellant 10 days after November 24, 1999, to file a responsive pleading to the counterclaim. On December 10, 1999, the Motion for Entry of Judgment and supporting affidavit were served by mail on Appellant. On December 10, 1999, a default judgment was entered against Appellant for \$2,829.66, accrued interest of \$78.30, and attorney's fees of \$860.00 (totaling \$3767.96), and the original complaint against Appellee was dismissed due to Appellant's failure to appear at the pre-trial conference.

Appellant filed a Notice of Appeal on February 9, 2000. On January 17, 2001, the Honorable Michael A. Yarnell affirmed the justice court's dismissal of Appellant's complaint against Appellee, but reversed and remanded the entry of default judgment on the counterclaim against Appellant, due to lack of prior notice. On March 21, 2001, the Justice of the Peace disqualified himself and the case was transferred to the Scottsdale Justice Court.

On July 10, 2001, the new trial judge, after hearing oral argument and weighing all the evidence, signed the judgment awarding Appellee \$4,214.52 on their counterclaim against Appellant. On July 16, 2001, Appellant filed a Request for Reconsideration and Clarification, but both were denied. On August 10, 2001, Appellant filed a Notice of Appeal in the matter before this court.

After a careful review of the record this court finds that the lower court's judgment on Appellee's counterclaim was proper as a matter of law, and that Appellee is entitled to a recovery

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2000-005211

of attorney's fees pursuant to A.R.S. §12-341.01, the underlying contract, and Rule 19 (b) of the Superior Court Rules of Appellate Procedure-Civil.

The issues raised by Appellant concern the sufficiency of the evidence presented to the Justice Court, to warrant the judgment for Appellee. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>1</sup> All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.<sup>2</sup> If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.<sup>3</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>4</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>5</sup> The Arizona Supreme Court has explained in State v. Tison<sup>6</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the

---

<sup>1</sup> *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>2</sup> *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>3</sup> *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>4</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

<sup>5</sup> *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>6</sup> SUPRA.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2000-005211

evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>7</sup>

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS THEREFORE ORDERED affirming the decision of the lower court.

IT IS FURTHER ORDERED remanding this case back for all future proceedings to the lower court.

---

<sup>7</sup> Id. at 553, 633 P.2d at 362.  
Docket Code 019